



Enhanced Cooperation Procedure and European Tax Law

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Overview

- What does Enhanced Cooperation mean?
- Where does this idea of an enhanced cooperation come from and why do we need such a mechanism within the EU?
- How do the existing provisions work?
- How much fragmentation is allowed within the EU?
- Does an enhanced cooperation have any impact on member states which are not part of the group?



In a Nutshell

The enhanced cooperation procedure is a mechanism that allows at least **nine member states** to use the **Union's institutions** and enact law which is **only binding among themselves**.

Two examples:

- divorce law
- the language regime of patents

Europe Tax Law (Proposals)

- FTT
- C(C)CTB



Background

European integration at its beginnings:

- All member states were to apply the **same policies, at the same speed**.
- A **common playing field** would only be established if
 1. the **same rules** applied to all
 2. these rules were **interpreted** in the same way by all
 3. an independent arbitrator checked their **implementation**
 4. their **infringements** were subject to sanctions by a judge.
- Aim: full harmonisation



Background

European integration and an increasing number of member states

- First significant **enlargement** of the European Community: Denmark, Ireland and the United Kingdom (in the 1970s)
- Accession of the **Eastern European states**
 - **Increase in diversity** not only in economic and political but also in cultural, historical and social matters
 - **Heterogeneity** between member states
- Do all states of the Union have to reach the same stage of integration at the same time?

Background

First significant **acts of differentiated integration**:

Schengen-Zone



Euro-Zone





Background

Treaty of Amsterdam

- “Closer Cooperation” for the first and third pillar

Treaty of Lisbon

- “Enhanced Cooperation Procedure” (ECP) with special provisions only for the Common Foreign and Security Policy

ECP – Framework

Request

- Member states should address a **request** to the Commission.
- The request should specify the **scope** and **objectives** of the ECP.

Commission's decision

- Commission enjoys wide **discretion** in respect of whether or not the Council is entrusted with this matter.
- Discretion concerns both the verification of the **requirements** set by the treaties and the expediency of the ECP with respect to the **Union's integration process**.

Council

- **Authorisation** to pursue an ECP:
 - Consent of the European Parliament and
 - a qualified majority voting



ECP - Framework

No special regime for enacting law under ECP

- **Ordinary competence** and **procedural rules** apply
 - Framed for the participation of twenty-eight member states
 - Only apply to those member states which are part of the ECP
 - e.g. unanimity/majority: votes of the representatives of the participating member states count
- **Mini-Union** within the Union



Fragmentation within the Union

Different **layers of integration**

- No uniform Union law which binds all member states
- Protection of the common Union standards
 - Secondary Union law has **barrier effects**
 - Minimum harmonisation or out-dated law?
Examples: EU-BEPS-Directive, EU-VAT-Directive



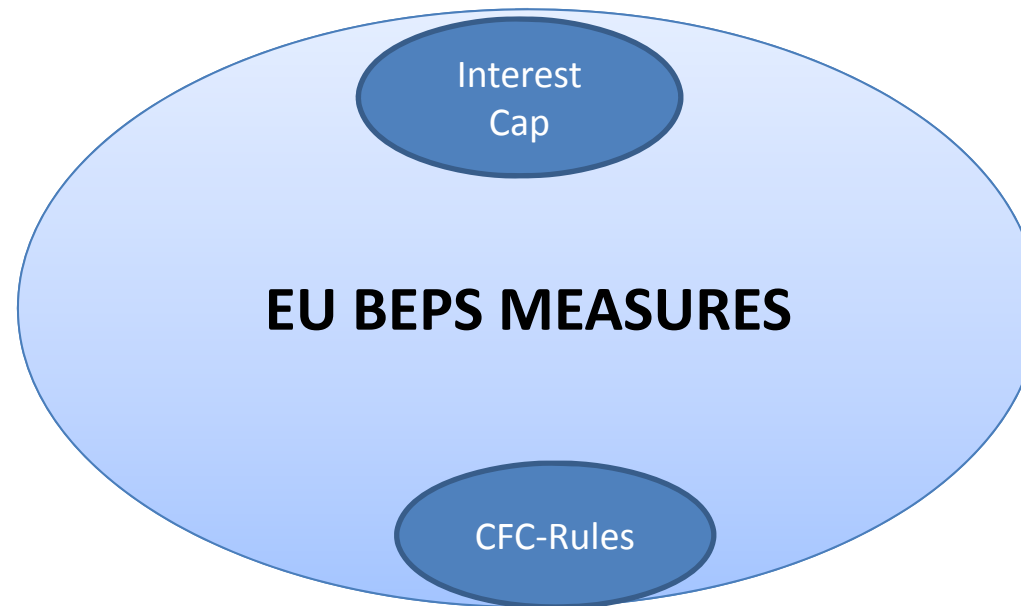
Fragmentation within the Union

Minimum harmonisation: EU-BEPS-Directive

- Member states have wide discretion when implementing the principles set by the directive.
- Member states should be free to align the implementation process.
- Joining forces only where the directives leaves it up to the member states to decide.
- ECP would build on the principles provided by the BEPS directive.

Fragmentation within the Union

Different harmonisation layers: minimum harmonisation between all member states and a **deeper harmonisation** between some but not all member states





Fragmentation within the Union

Out-dated Law: EU-VAT-Directive

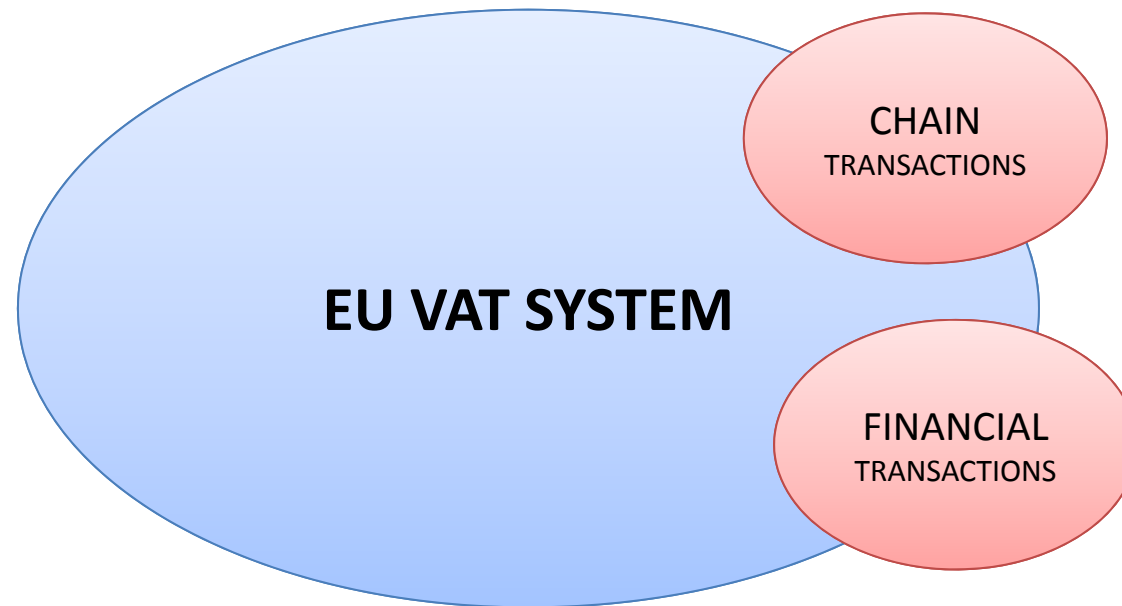
- Exhaustive VAT regime
- Old rules are not able to deal with the new economic reality → it should nevertheless cover all VAT issues
- Member states are prohibited from implementing special VAT rules for the financial sector and chain transactions.

Are at least nine member states allowed **to do more under an enhanced cooperation** than they are entitled to do on their own?

Fragmentation within the Union

Fragmentation within the European VAT system:

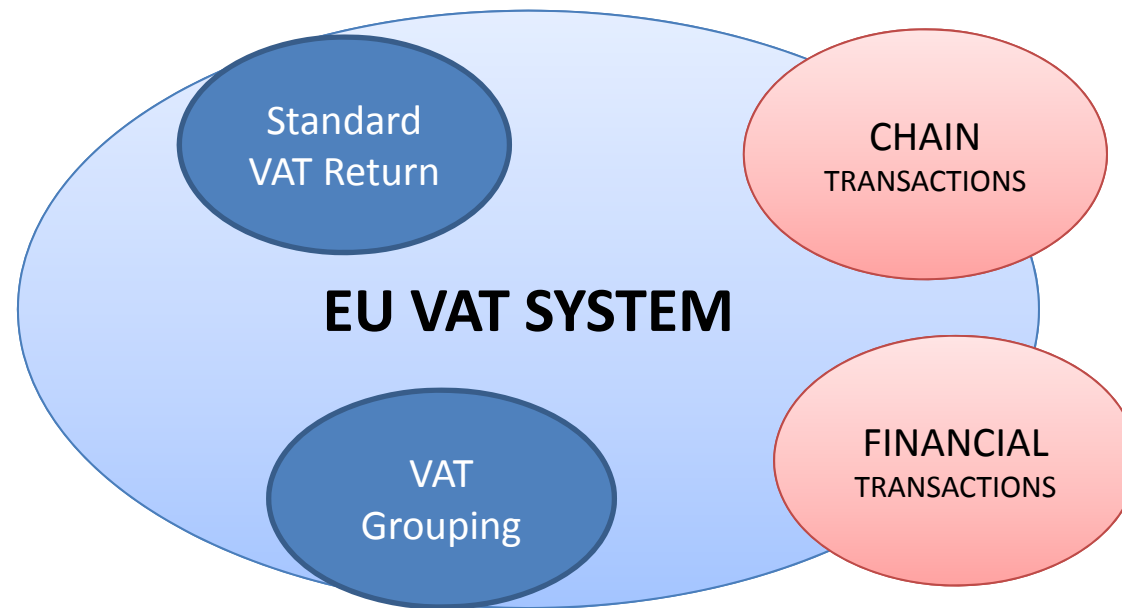
Non-participating member states would apply the “old” rules whereas participating member states would use new provisions that are capable of addressing the challenges of the new economic realities.



Fragmentation within the Union

VAT-Directive does leave some **discretion** to the member states:

- Procedural issues
- VAT-Grouping (Art. 11 VAT-Directive)





Fragmentation within the Union

Example:

- Implementing a Carbon Tax under enhanced cooperation
- On Union level: No real equivalent
- But: the Union Emission Trading Scheme
 - Union's policy to combat climate change
 - Key tool for reducing greenhouse gas emissions cost-effectively
 - A cap and a trade system



Fragmentation within the Union

Carbon Tax and the EU Emission Trading Scheme have a **similar purpose** – but use **different tools**

EU – ETS

- market force
- Companies will invest in more efficient and less emitting plants if the emission allowances are more expensive than the costs for new technologies.

Carbon Tax

- levied on the emission of carbon dioxide and other greenhouse gasses
- direct incentives



Fragmentation within the Union

- Carbon Tax facilitates the aim of the EU Emission Trading Scheme
- But: EU Emission Trading Scheme sets a cap
→ the emission of these gasses is allowed
- Purpose of the EU Emission Trading Scheme: achieving the aims set by the Kyoto Protocol
→ undercutting the cap is in line with the EU Emission Trading Scheme



Impact on non-participating member states

- ECP is only binding for participating member states.
- Non-participating member states are prohibited from impeding the implementation of the ECP.
 - Prohibited from any undertakings that directly affect the law enacted under the ECP? or
 - Is a non-participating member state bound by the principles underlying the law enacted under ECP?
 - Non-participating member states only gave their consent that some member states are entitled to put measures forward.
 - They play no active role in the negotiations.
 - No soft-law effects



Many thanks!